JOURNAL OF FAMILY LAW

Index
Volume 20
1981-82

University of Louisville
School of Law

ARTICLES BY AUTHOR

BERG, KENNETH FREDERICK (Are All Murderers Unfit Parents?: Defining "Depravity" in the Illinois Adoption Act) .. 415
BESHAROV, DOUGLAS J. (Representing Abused and Neglected Children: When Protecting Children Means Seeking the Dismissal of Court Proceedings) 217
BROPHY, KATIE MARIE (A Surrogate Mother Contract to Bear a Child) 263
HOFF, REKA POTGIETER (Allocation of the Dependency Exemption for Children of Divorced Parents: Equitable Division of the Divorce Bonus) 43
KAWASHIMA, YASUHIDE (Adoption in Early America) 677
McGRAW, ROBERT E.; STERIN, GLORIA J.; DAVIS, JOSEPH M. (A Case Study in Divorce Law Reform and Its Aftermath) .. 443
MICHEL, AARON E. (Abortion and International Law: The Status and Possible Extention of Women's Right to Privacy) 241
OLDHAM, THOMAS (Cohabitation by an Alimony Recipient Revisited) 615
REISNER, EMILY; BOLK, T.A. (A Layman's Guide to the Use of Blood Group Analysis in Paternity Testing) 657
SCHECHTER, LOWELL F. (The Violent Family and the Ambivalent State: Developing a Coherent Policy for State Aid to Victims of Family Violence) 1
SOKOLOSKY, WESLEY (The Sick Child and the Reluctant Parent—A Framework for Judicial Intervention) 69

ARTICLES BY TITLE

ABORTION AND INTERNATIONAL LAW: THE STATUS AND POSSIBLE EXTENSION OF WOMEN'S RIGHT TO PRIVACY (Aaron E. Michel) 241
ADOPTION IN EARLY AMERICA (Yasuhide Kawashima) 677

ALLOCATION OF THE DEPENDENCY EXEMPTION FOR CHILDREN OF DIVORCED PARENTS: EQUITABLE DIVISION OF THE DIVORCE BONUS (Reka Potgieter Hoff) 43
ARE ALL MURDERERS UNFIT PARENTS?: DEFINING "DEPRAVITY" IN THE ILLINOIS ADOPTION ACT (Kenneth Frederick Berg) 415
A CASE STUDY IN DIVORCE LAW REFORM AND ITS AFTERMATH (Robert E. McGraw, Gloria J. Sterin, Joseph M. Davis) 443
COHABITATION BY AN ALIMONY RECIPIENT REVISITED (Thomas Oldham) 615
A LAYMAN'S GUIDE TO THE USE OF BLOOD GROUP ANALYSIS IN PATERNITY TESTING (Emily Reisner, T.A. Bolk) 657
REPRESENTING ABUSED AND NEGLECTED CHILDREN: WHEN PROTECTING CHILDREN MEANS SEEKING THE DISMISSAL OF COURT PROCEEDINGS (Douglas J. Besharov) 217
THE SICK CHILD AND THE RELUCTANT PARENT—A FRAMEWORK FOR JUDICIAL INTERVENTION (Wesley Sokolosky) 69
A SURROGATE MOTHER CONTRACT TO BEAR A CHILD (Katie Marie Brophy) 263
THE VIOLENT FAMILY AND THE AMBIVALENT STATE: DEVELOPING A COHERENT POLICY FOR STATE AID TO VICTIMS OF FAMILY VIOLENCE (Lowell F. Schechter) ... 1

NOTES

CUSTODY AND THE COHABITING PARENT 697
FAMILY LAW ISSUES IN HIGH SCHOOL ATHLETIC ELIGIBILITY: EQUAL PROTECTION V. THE TRANSFER RULE 293
FAMILY MEMBER EXEMPTION FOR ACCESSORY AFTER THE FACT 105
MAINE V. THIBOUTOT: HAS THE SUPREME COURT OPENED THE FLOODGATES FOR SECTION 1983 CLAIMS? 127
NINE MONTHS TO LIFE—THE LAW AND THE PREGNANT INMATE 523
NOT MY FATHER'S SON: OBTAINING PREFERRED IMMIGRATION STATUS THROUGH PATERNAL AFFILIATION 323
A REVIEW OF THE CHILD SUPPORT ENFORCEMENT PROGRAM 489

THE ROLE OF LEGAL SERVICES IN FAMILY LAW: SOCIAL ENGINEERING OR SERVICE TO THE POOR 721

BOOK REVIEWS

ESPOSITO, Women in Muslim Family Law (Reviewed by Margaret E. Keane) 745
IRVING, Divorce Mediation (Reviewed by Mitchell A. Charney) .. 147
KRAUSE, Child Support in America: The Legal Perspective (Reviewed by Steven M. Fleece) 545
LUEPNITZ, Child Custody: A Study of Families After Divorce (Reviewed by Charles E. Mullins) 741
McCARTHY and CARR, Juvenile Law and Its Processes: Cases and Materials (Reviewed by Victor L. Streib) 337

SUBJECT INDEX

ABORTION

ARTICLE

Abortion and International Law: The Status and Possible Extension of Women's Right to Privacy (Aaron E. Michel) 241

CASE NOTES

State statute requiring physician to notify minor's parents before performing abortion on minor held constitutional. *H.L. v. Matheson*, 101 S. Ct. 1164 (1981) 153

Requirement of twenty-four hour waiting period between signing informed consent to abortion and performance of operation burdens right to abortion so directly as to warrant preliminary injunction against enforcement. Requirement of signed consent form does not warrant preliminary injunction, but requiring fetal description on form is so clearly burdensome and immaterial as to warrant preliminary injunction. Requirement of parental or judicial approval before minor may obtain abortion is rationally related to legitimate state interest and will not be preliminarily enjoined. *Planned Parenthood League of Massachusetts v. Bellotti*, 641 F.2d 1006 (1st Cir. 1981) 158

State Budget Act restricting circumstances under which public funds would be authorized to pay for abortions for Medi-Cal recipients held unconstitutional. *Committee To Defend Reproductive Rights v. Myers*, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (1981) 345

Florida Statute requiring an unmarried minor to acquire parent's consent or court order prior to obtaining an abortion and authorizing the court to base its decision on the best interest of the minor is unconstitutional. Constitutionality of provision requiring a married woman to consult her husband prior to obtaining an abortion cannot be determined absent finding concerning risk of decrease in fertility posed by abortion procedure. *Scheinberg v. Smith*, 659 F.2d 476 (5th Cir. 1981) . 551

City's denial of plaintiffs' application for a license to open an abortion facility in a business district adversely affects pregnant women's privacy rights. Strict scrutiny standard is applicable to review of the denial and facts warrant grant of preliminary injunction to plaintiffs. *Deerfield Medical Center v. City of Deerfield Beach*, 661 F.2d 328 (5th Cir. 1981) 751

ADMINISTRATIVE LAW

CASE NOTE

State statute authorizing unannounced inspections of family day care homes violates fourth amendment. *Rush v. Obledo*, 517 F. Supp. 905 (N.D. Cal. 1981). 555

ADOPTION

ARTICLES

Are All Murderers Unfit Parents?: Defining "Depravity" in the Illinois Adoption Act (Kenneth Frederick Berg) 415
Adoption in Early America (Yasuhide Kawashima) 677

CASE NOTE

Natural mother's admitted lesbian relationship was insufficient to justify severance of her parental rights. *Doe v. Doe*, ___ Va. ___, 284 S.E.2d 799 (1981) 771

ATHLETICS

NOTE

Family Law Issues in High School Athletic Eligibility: Equal Protection v. The Transfer Rule 293

CHILD ABUSE

ARTICLE

Representing Abused and Neglected Children: When Protecting Children Means Seeking the Dismissal of Court Proceedings (Douglas J. Besharov) 217

CHILD SUPPORT

NOTE

A Review of the Child Support Enforcement Program 489

CASE NOTES

Allowing a support order to benefit the mother of an illegitimate child where mother misled father concerning her use of contraceptives would violate father's constitutional right to choose whether to beget a child. However, child has right to standard of living commensurate with father's. If mother alone cannot provide such standard, state interest warrants diminution of father's right by ordering his contribution to support. *Pamela P. v. Frank S.*, ___ Misc. 2d ___, 443 N.Y.S.2d 343 (Fam. Ct. 1981) 562

Statute of limitations for enforcement of child support order cannot be avoided by execution of support order in names of children rather than mother. *In re Marriage of Utigard*, 126 Cal. App. 3d 133, 178 Cal. Rptr. 546 (1981). 755

CIVIL RIGHTS

NOTE

Maine v. Thiboutot: Has the Supreme Court Opened the Floodgates for Section 1983 Claims? 127

COHABITATION

ARTICLE

Cohabitation by an Alimony Recipient Revisited (Thomas Oldham)... 615

NOTE

Custody and the Cohabiting Parent 697

CASE NOTE

Unmarried cohabitants are free to contract with each other in relation to personal services but no contract as to earnings or assets may be implied from their cohabitation. *Morone v. Morone*, 50 N.Y.2d 481, 413 N.E.2d 1154 (1980) 161

CONSORTIUM

CASE NOTE

Husband may bring a derivative loss of consortium claim against wife's urologist based upon breach of warranty. *Scarzella v. Saxon*, 436 A.2d 358 (D.C. 1981) 559

CONSTITUTIONAL LAW

NOTES

Family Law Issues in High School Athletic Eligibility: Equal Protection v. The Transfer Rule 293

CASE NOTES

Statutory rape laws which criminalize consensual sexual intercourse with a minor female do not violate equal protection although the laws punish males only. *Michael M. v. Superior Court of Sonoma County*, 101 S. Ct. 1200 (1981) 163

Airline's denial of seniority accrual for maternity leave constituted sex discrimination under Title VII. *Harriss v. Pan American World Airways, Inc.*, 24 Empl. Prac. Dec. 18,482, 24 Fair Empl. Prac. Cas. 947 (9th Cir. 1980) 166

State's procedure limiting marriage rights of inmates held unconstitutional as violative of prisoner's fundamental right to marry. *Salisbury v. List*, 501 F. Supp. 105 (D. Nev. 1980) 171

New York statute criminalizing consensual sodomy between unmarried persons held violative of constitutional rights of privacy and equal protection of the laws. *People v. Onofre*, 51 N.Y.2d 476, 415 N.E.2d 936, 434 N.Y.S.2d 947 (1980). 174

Indigent parents do not have a constitutional right to counsel in all parental rights termination proceedings. *Lassiter v. Department of Social Services of Durham County*, 101 S. Ct. 2153 (1981) . 178

State Budget Act restricting circumstances under which public funds would be authorized to pay for abortions for Medi-Cal recipients held unconstitutional. *Committee To Defend Reproductive Rights v. Myers*, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (1981) 345

State's denial of subsidized blood grouping tests for an indigent putative father is a deprivation of due process. *Little v. Streater*, 101 S. Ct. 2202 (1981) 355

Military retirement benefits are not divisable as community property in divorce settlements. *McCarty v. McCarty*, 101 S. Ct. 2728 (1981) 359

New York statute authorizing pretrial detention of delinquents prior to a probable cause hearing violates due process. *United States ex rel. Martin v. Strasburg*, 513 F. Supp. 691 (S.D.N.Y. 1981) 362

Florida statute requiring an unmarried minor to acquire parent's consent or court order prior to obtaining an abortion and authorizing the court to base its decision on the best interest of the minor is unconstitutional. Constitutionality of provision requiring a married woman to consult her husband prior to obtaining an abortion cannot be determined absent finding concerning risk of decrease in fertility posed by abortion procedure. *Scheinberg v. Smith*, 659 F.2d 476 (5th Cir. 1981) . 551

State statute authorizing unannounced inspections of family day care homes violates fourth amendment. *Rush v. Obledo*, 517 F. Supp. 905 (N.D. Cal. 1981) 555

Allowing a support order to benefit the mother of an illegitimate child where mother misled father concerning her use of contraceptives would violate father's constitutional right to choose whether to beget a child. However, child has right to standard of living commensurate with father's. If mother alone cannot provide such standard, state interest warrants diminution of father's right by ordering his contribution to support. *Pamela P. v. Frank S.*, ___ Misc. 2d ___, 443 N.Y.S.2d 343 (Fam. Ct. 1981) 562

Fair preponderance of evidence standard of proof prescribed by New York statute in parental rights termination proceeding violates due process. *Santosky v. Kramer*, 102 S. Ct. 1388 (1982) 765

CRIMINAL LAW

NOTE

Family Member Exemption for Accessory After the Fact 105

CASE NOTE

New York statute criminalizing consensual sodomy between unmarried persons held violative of constitutional rights of privacy and equal protection of the laws. *People v. Onofre*, 51 N.Y.2d 476, 415 N.E.2d 936, 434 N.Y.S.2d 947 (1980) 174

CRIMINAL LAW—JUVENILES

CASE NOTES

Statutory rape laws which criminalize consensual sexual intercourse with a minor female do not violate equal protection although the laws punish males only. *Michael M. v. Superior Court of Sonoma County*, 101 S. Ct. 1200 (1981) 163

New York statute authorizing pretrial detention of delinquents prior to a probable cause hearing violates due process. *United States ex rel. Martin v. Strasburg*, 513 F. Supp. 691 (S.D.N.Y. 1981).. 362
State court violated constitutional requirement that sentencing authority in capital cases must consider any relevant mitigating factors by refusing to consider minor's family history as mitigating against imposition of death penalty. *Eddings v. Oklahoma*, 50 U.S.L.W. 4161 (U.S. Jan. 19, 1982) 760
Terms of treatment prescribed under Youth Corrections Act (YCA) may be modified when judge who imposes subsequent adult sentence determines that further YCA treatment will not benefit offender. Bureau of Prisons may not modify terms of treatment without such judicial determination. *Ralston v. Robinson*, 102 S. Ct. 233 (1981) 565

CUSTODY

NOTE

Custody and the Cohabiting Parent 697

CASE NOTE

The civil rights of a minor United States citizen were not violated by an Indiana court's recognition and enforcement of a Swedish custody decree requiring the child's return to his mother in Sweden. *Schleiffer v. Meyers*, 644 F.2d 656 (7th Cir. 1981).... 351

DIVORCE AND DISSOLUTION

ARTICLES

Allocation of the Dependency Exemption for Children of Divorced Parents: Equitable Division of the Divorce Bonus (Reka Potgieter Hoff) 43
A Case Study in Divorce Law Reform and Its Aftermath (Robert E. McGraw, Gloria J. Sterin, Joseph M. Davis) 443

CASE NOTES

Military retirement benefits are not divisable as community property in divorce settlements. *McCarty v. McCarty*, 101 S. Ct. 2728 (1981)..... 359

While Michigan statute does not authorize divorce court to compel property distribution to a third party, the court can enforce the immediate parties' prior agreement to make such distribution. *Kasper v. Metropolitan Life Insurance Co.*, ___ Mich. ___, 313 N.W.2d 904 (1981) 778

The validity of yearly foreign divorces is to be determined according to state law. However, certification of question of validity of divorce to state court is unnecessary where the U.S. Tax Court may apply the sham transaction doctrine. *Boyter v. Commissioner*, 668 F.2d 1382 (4th Cir. 1981) 762

FAMILY VIOLENCE

ARTICLE

The Violent Family and the Ambivalent State: Developing a Coherent Policy for State Aid to Victims of Family Violence (Lowell F. Schechter) 1

HUSBAND AND WIFE

CASE NOTES

Neither a husband nor a wife is liable for necessaries, such as medical care, supplied to the other, absent an express or implied contract. *Condore v. Prince George's County*, 289 Md. 516, 425 A.2d 1011 (1981) 365

Husband may bring a derivative loss of consortium claim against wife's urologist based upon breach of warranty. *Scarzella v. Saxon*, 436 A.2d 358 (D.C. 1981) 559

IMMIGRATION

NOTE

Not My Father's Son: Obtaining Preferred Immigration Status Through Paternal Affiliation 323

INTERNATIONAL LAW

ARTICLE

Abortion and International Law: The Status and Possible Extension of Women's Right To Privacy (Aaron E. Michel) 241

LEGAL SERVICES

NOTE

The Role of Legal Services in Family Law: Social Engineering or Service to the Poor? 721

MARRIAGE

CASE NOTE

State's procedure limiting marriage rights of inmates held unconstitutional as violative of prisoner's fundamental right to marry. *Salisbury v. List*, 501 F. Supp. 105 (D. Nev. 1980) 171

PARENTAL RIGHTS

ARTICLE

Are All Murderers Unfit Parents?: Defining "Depravity" in the Illinois Adoption Act (Kenneth Frederick Berg) 415

CASE NOTES

Indigent parents do not have a constitutional right to counsel in all parental rights termination proceedings. *Lassiter v. Department of Social Services of Durham County*, 101 S. Ct. 2153 (1981) . 178
Natural mother's admitted lesbian relationship was insufficient to justify severance of her parental rights. *Doe v. Doe*, ___ Va. ___, 283 S.E.2d 799 (1981) 771
Fair preponderance of evidence standard of proof prescribed by New York statute in parental rights termination proceeding violates due process. *Santosky v. Kramer*, 102 S. Ct. 1388 (1982) 765

PARENT AND CHILD

ARTICLE

The Sick Child and the Reluctant Parent—A Framework for Judicial Intervention (Wesley Sokolosky) 69

CASE NOTES

State statute requiring physician to notify minor's parents before performing abortion on minor held constitutional. *H.L. v. Matheson*, 101 S. Ct. 1164 (1981) 153

Requirement of twenty-four hour waiting period between signing informed consent to abortion and performance of operation burdens right to abortion so directly as to warrant preliminary injunction against enforcement. Requirement of signed consent form does not warrant preliminary injunction, but requiring fetal description on form is so clearly burdensome and immaterial as to warrant preliminary injunction. Requirement of parental or judicial approval before minor may obtain abortion is rationally related to legitimate state interest and will not be preliminarily enjoined. *Planned Parenthood League of Massachussets v. Bellotti*, 641 F.2d 1006 (1st Cir. 1981) 158

Florida statute requiring an unmarried minor to acquire parent's consent or court order prior to obtaining an abortion and authorizing the court to base its decision on the best interest of the minor is unconstitutional. Constitutionality of provision requiring a married woman to consult her husband prior to obtaining an abortion cannot be determined absent finding concerning risk of decrease in fertility posed by abortion procedure. *Scheinberg v. Smith*, 659 F.2d 476 (5th Cir. 1981) . 551

PATERNITY

ARTICLE

A Layman's Guide to the Use of Blood Group Analysis in Paternity Testing (Emily Reisner, T.A. Bolk) 657

CASE NOTES

State's denial of subsidized blood grouping tests for an indigent putative father is a deprivative of due process. *Little v. Streater*, 101 S. Ct. 2202 (1981) 355

State trial court has discretion to determine whether due process requires appointment of counsel to indigent inmate defendants in paternity actions, subject to appellate review. *Nordgren v. Mitchell*, 524 F. Supp. 242 (D. Utah 1981) 569

Three year statute of limitations on filing action to establish paternity is unconstitutional. *State v. D.A.P.*, 284 S.E.2d 912 (W. Va. 1981) 774

PENSIONS

CASE NOTE

Military retirement benefits are not divisable as community property in divorce settlements. *McCarty v. McCarty*, 101 S. Ct. 2728 (1981) 359

PRISONERS

NOTE

Nine Months To Life—The Law and the Pregnant Inmate 523

CASE NOTES

State's procedure limiting marriage rights of inmates held unconstitutional as violative of prisoner's fundamental right to marry. *Salisbury v. List*, 501 F. Supp. 105 (D. Nev. 1980) 171

State trial court has discretion to determine whether due process requires appointment of counsel to indigent prison inmate defendants in paternity actions, subject to appellate review. *Nordgren v. Mitchell*, 524 F. Supp. 242 (D. Utah 1981)..... 569

PROPERTY DIVISION

CASE NOTES

Military retirement benefits are not divisable as community property in divorce settlements. *McCarty v. McCarty*, 101 S. Ct. 2728 (1981)..... 359

While Michigan statute does not authorize divorce court to compel property distribution to a third party, the court can enforce the immediate parties' prior agreement to make such distribution. *Kasper v. Metropolitan Life Insurance Co.*, ___ Mich. ___, 313 N.W.2d 904 (1981) 778

PUBLIC ASSISTANCE

CASE NOTES

State Budget Act restricting circumstances under which public funds would be authorized to pay for abortions for Medi-Cal recipients held unconstitutional. *Committee To Defend Reproductive Rights v. Myers*, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (1981) 345

Federal Medicaid regulations which permit the states to deem spouse's income to be available to a Medicaid applicant for eligibility purposes are consistent with statutory scheme of the Social Security Act and represent a reasonable exercise of the power delegated to the Secretary of Health and Human Services. *Schweiker v. Gray Panthers*, 101 S. Ct. 2633 (1981) . 369

State's practice of denying unemployment compensation to job seeking women who left last employment due to pregnancy violates section 3304(a) (12) of the Federal Unemployment Tax Act. Claimants are eligible for retroactive benefits, computed from effective date of the section, but reduced by any welfare payments received. *Brown v. Porcher*, 660 F.2d 1001 (4th Cir. 1981) 572

SCHOOLS

NOTE

Family Law Issues in High School Athletic Eligibility: Equal Protection v. The Transfer Rule 293

SEX DISCRIMINATION

CASE NOTES

Airline's denial of seniority accrual for maternity leave constituted sex discrimination under Title VII. *Harriss v. Pan American World Airways, Inc.*, 24 Empl. Prac. Dec. 18,482, 24 Fair Empl. Prac. Cas. 947 (9th Cir. 1980) 166

State's practice of denying unemployment compensation to job seeking women who left last employment due to pregnancy violates section 3304(a)(12) of the Federal Unemployment Tax Act. Claimants are eligible for retroactive benefits, computed from effective date of the section, but reduced by any welfare payments received. *Brown v. Porcher*, 660 F.2d 1001 (4th Cir. 1981) 572

SEXUAL BEHAVIOR

CASE NOTES

Statutory rape laws which criminalize consensual sexual intercourse with a minor female do not violate equal protection although the laws punish males only. *Michael M. v. Superior Court of Sonoma County*, 101 S. Ct. 1200 (1981) 163

New York statute criminalizing consensual sodomy between unmarried persons held violative of constitutional rights of privacy and equal protection of the laws. *People v. Onofre*, 51 N.Y.2d 476, 415 N.E.2d 936, 434 N.Y.S.2d 947 (1980) 174

SOCIAL SECURITY

CASE NOTE

Federal Medicaid regulations which permit the states to deem spouse's income to be available to a Medicaid applicant for eligibility purposes are consistent with statutory scheme of the Social Security Act and represent a reasonable exercise of the power delegated to the Secretary of Health and Human Services. *Schweiker v. Gray Panthers*, 101 S. Ct. 2633 (1981) . 369

STERILIZATION

CASE NOTES

A court may authorize sterilization of an incompetent if there is clear, cogent, and convincing evidence that the person is incompetent, is likely to remain so in the foreseeable future, and that sterilization is in the person's best interest. *In re Grady*, 85 N.J. 235, 426 A.2d 467 (1981) 374

Court has power, independent of any statutory authorization, to order sterilization of a mentally retarded minor where there is clear and convincing evidence that sterilization is medically essential. *In re A.W.*, ___ Colo. ___, 637 P.2d 366 (1981) ... 781

SURROGATE PARENTS

ARTICLE

A Surrogate Mother Contract to Bear a Child (Katie Marie Brophy) 263

TAXATION

ARTICLE

Allocation of the Dependency Exemption for Children of Divorced Parents: Equitable Division of the Divorce Bonus (Reka Potgieter Hoff) 43

CASE NOTE

The validity of yearly foreign divorces is to be determined according to state law. However, certification of question of validity of divorce to state court is unnecessary where the U.S. Tax Court may apply the sham transaction doctrine. *Boyter v. Commissioner*, 668 F.2d 1382 (4th Cir. 1981) 762

TORTS

CASE NOTE

Physician's negligent failure to diagnose first child's illness as cystic fibrosis and to inform parents they were carriers of such genetically transferable disease constituted deprivation of parents' right to an informed choice of whether to assume risk of having a second child. *Schroeder v. Perkel*, 87 N.J. 53, 432 A.2d 834 (1981) 576